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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,967	10/10/2003	Sheri Lynn Baker	CFLAY.00197	1851
22858	7590	03/09/2006	EXAMINER	
CARSTENS & CAHOON, LLP P O BOX 802334 DALLAS, TX 75380			KUHNS, SARAH LOUISE	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 03/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/683,967

Applicant(s)

BAKER ET AL.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.  
4a) Of the above claim(s) 7-16 and 27-43 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6 and 17-26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 and 17-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is insufficient support for the newly added limitations that the corn kernels consist essentially of dent corn and that the masa dough is derived essentially from dent corn.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 4, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis for the reasons set forth in the previous office action.

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Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis in further view of "A Dinner Experiment" and "Dried Food Products" for the reasons set forth in the previous office action.

Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Food Product Design" in view of "Salmon Patties" and Ellis for the reasons set forth in the previous office action.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of "Salmon Patties," for the reasons set forth in the previous Office Action.

### ***Response to Arguments***

Applicant's arguments filed January 23, 2006, have been fully considered but they are not persuasive.

Applicant argues that Ellis relates to snack foods made from waxy corn and therefore teaches away from a product consisting essentially of dent corn. However, Ellis discloses the food product comprising a blend of dent and waxy corn (column 2, lines 31-34) and the claim language does not completely exclude the inclusion of waxy corn.

Applicant also argues that the prior art teaches away from the use of waxy corn to produce products intended for human consumption and cites Murray in support of this. It is not seen how this argument relates to the claims at hand. Ellis, which is a more recent patent than Murray, clearly illustrates that waxy corn products can indeed be used for human consumption and also discloses corn

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chips with the claimed properties. Therefore, the reference has been properly applied.

Applicant argues that Ellis is directed to producing low-oil content corn products having a tender texture and derived from waxy corn and teaches away from Applicant's low-oil-content flavor additive made from traditional dent corn. However, the claim language of "consisting essentially of" still leaves room for some waxy corn and therefore, the teachings of Ellis still read on the claimed invention.

Applicant also argues that the use of waxy corn would materially affect the basic and novel characteristics of Applicant's claimed invention. In support of this, Applicant points to disclosures in Ellis teaching a lighter color due to the use of waxy corn. However, as discussed above, the claim language does not exclude the blend taught by Ellis. Also, no evidence has been submitted demonstrating the differences in the color and other characteristics, to which Applicant refers, of the claimed invention and that of Ellis.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory


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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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